

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Implementation of Section 309(j))
of the Communications Act)
Competitive Bidding)

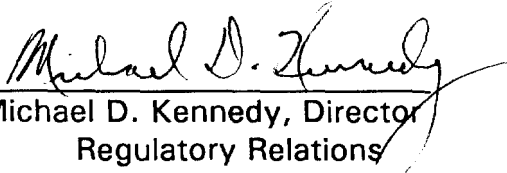
PP Docket No. 93-253

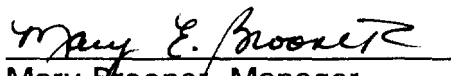
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

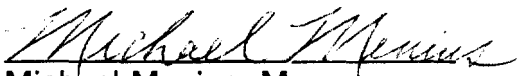
REPLY COMMENTS OF MOTOROLA INC.

Motorola Inc. ("Motorola") herewith submits its reply to comments in response to the above-captioned proceeding. As detailed below, Motorola believes the record developed in this proceeding evidences substantial agreement that: (1) the Commission should guard against the possibility that competitive bidding will negatively impact overall management of the spectrum in the public interest; (2) competitive bidding procedures are inappropriate for the licensing of "Big LEO" MSS systems; (3) the Commission should consider allowing limited security interests in FCC licenses to ensure that obtaining capital for competitive bidding and deployment of PCS does not create an insurmountable entry barrier; and, (4) consideration of competitive bidding for IVHS and AVM systems should be deferred until the conclusion of related rulemakings.

Respectfully submitted by:


Michael D. Kennedy, Director
Regulatory Relations
Motorola Inc.
1350 I Street, N.W., Suite 400
Washington, DC 20005
(202) 371-6951


Mary E. Brooner, Manager
Regulatory Relations
Motorola Inc.
1350 I Street, N.W., Suite 400
Washington, DC 20005
(202) 371-6899


Michael Menius, Manager
Common Carrier Relations
Motorola Inc.
1350 I Street, N.W., Suite 400
Washington, DC 20005
(202) 371-6937

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I. THE COMMENTS AGREE THAT THE COMMISSION'S ROLE AS SPECTRUM MANAGER IN THE PUBLIC INTEREST SHOULD NOT BE ALTERED DUE TO THE ADVENT OF COMPETITIVE BIDDING

The record in this proceeding demonstrates agreement that the authorization to employ auctions should not be interpreted to alter the Commission's basic responsibility to manage spectrum in the public interest. Motorola and others have noted that the authority to use competitive bidding was carefully circumscribed by statutory language that explicitly reaffirms the public interest nature of allocation and licensing actions by the Commission.¹ NABER states, for example, that "the public interest obligations of the Commission remain and override the issuance of licenses through auctions."² As detailed below, the comments also discussed several broad areas where special care needs to be exercised to ensure that competitive bidding does not detrimentally affect allocation, licensing, and use of spectrum in the public interest.

First, commenters have argued that the competitive bidding legislation evidences an intent to ensure that the Commission continues to avoid mutual exclusivity wherever possible.³ Commenters specifically noted Congress' direction to the Commission "to continue to use engineering solutions, negotiation, threshold

¹ Comments of American Automobile Association, Inc. ("AAA") at 5-6; Comments of American Mobile Telecommunications Association, Inc. ("AMTA") at 3-4; Comments of National Association of Business and Educational Radio, Inc. ("NABER") at 4-5; Comments of United States Telephone Association at 1-2; Comments of Utilities Telecommunications Council ("UTC") at 10.

² Comments of NABER at 5.

³ See, e.g., Comments of Allcity Paging, Inc. at 3.

qualifications, service regulations, and other means in order to avoid mutual exclusivity in application and licensing proceedings,"⁴ and urged the Commission not to "create mutually exclusive areas of licensing which do not presently exist."⁵ In effect, actions that increase mutual exclusive licensing scenarios, and thus broaden the use of competitive bidding, violate Congress' intent that "the FCC not base a finding of public interest, convenience, and necessity on the likely revenues to be raised by the auction process."⁶ Under the circumstances, the Commission should continue past efforts to make services available to the public rapidly by working with applicants and frequency coordinators to minimize the potential for mutual exclusivity.

Second, a number of commenters agreed with Motorola that construction benchmarks are an important regulatory tool to ensure that licensed spectrum is used in the public interest.⁷ Indeed, Congress directed the Commission to develop "performance requirements . . . to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum . . . , and to promote investment

⁴ See Conference Report of the Committee on the Budget, House of Representatives, to accompany H.R. 2264, Report No. 103-213, at p. 485 (Aug. 4, 1993).

⁵ Comments of NABER at 7.

⁶ Comments of AMTA at 4.

⁷ Comments of American Petroleum Institute ("API") at 7, 9; Comments of Bell Atlantic Personal Communications, Inc. at 19; Comments of Quentin L. Breen at 5; Comments of GTE at 16; Comments of JMP Telecom Systems, Inc. at 5-6; Comments of Liberty Cellular, Inc. at 7; Comments of the Small Telephone Companies of Louisiana at 6; Comments of Southwestern Bell Corporation ("SWBC") at 31; Comments of UTC at 17; Comments of Vanguard Cellular Systems, Inc. at 6; Comments of Richard L. Vega Group at 10; Comments of Windsong Communications, Inc. ("Windsong") at 5; Comments of Wireless Cable Association International, Inc. ("WCAI") at 17.

in and rapid deployment of new technologies and services."⁸ Thus, construction benchmarks serve valuable functions by avoiding indefinite warehousing of spectrum and promoting "efficient and intensive use of the spectrum."⁹ No valid public policy reason exists for dispensing with construction benchmarks solely due to the use of competitive bidding as a licensing system.

Third, a number of filers supported Motorola's argument that the FCC's competitive bidding policies should recognize and protect valuable private radio uses.¹⁰ AAA, for example, noted the drafting committee's statement that the "enactment of this [competitive bidding] section will not affect the Commission's current procedures for granting licenses for private use."¹¹ Simply stated, private radio users attempting to obtain spectrum to satisfy internal communications needs cannot compete financially for spectrum with commercial providers of spectrum-based services, and have specialized needs that cannot be met using commercial offerings. Yet, these private radio users form an important part of our nation's economy and their spectrum needs should be a priority. Accordingly, to ensure that private radio needs are not lost in the commercialization of the spectrum, commenters specifically supported such measures as the proposed exemption from

⁸ 47 U.S.C. § 309(j)(4)(B).

⁹ 47 U.S.C. § 309(j)(4)(B). Comments of WCAI at 18.

¹⁰ Comments of AAA at 3-8; Comments of AMTA at 5-8; Comments of API at 4-5; Comments of Association of Public Safety Communications Officers-International, Inc. at 2-4; Comments of E.F. Johnson at 4, 9; Comments of Industrial Communications Association ("ICA") at 3; Comments of UTC at 4-6.

¹¹ Comments of AAA at 6.

bidding for General Category channels and channels obtained through intercategory sharing.¹²

II. THE RECORD CLEARLY DEMONSTRATES THAT COMPETITIVE BIDDING IS INAPPROPRIATE FOR MOBILE SATELLITE SERVICES

In its comments,¹³ Motorola argued strongly against the use of competitive bidding procedures for licensing the pending "Big LEO" applications in the Mobile Satellite Service ("MSS").¹⁴ Motorola noted that the pending applications are not mutually exclusive and that, in actuality, the FCC is bound by the legislation to try and resolve instances of mutual exclusivity through technical means when the public interest is better served.¹⁵ Motorola also discussed the negative international implications that would result should the FCC auction satellite spectrum.¹⁶

The comments filed by other satellite interests strongly echo the arguments posited by Motorola. Notably, each satellite commenter urges the FCC to abandon its tentative view that competing applications for satellite authorizations be considered mutually exclusive for purposes of justifying the use of competitive

¹² Comments of AMTA at 9-11; Comments of AAA at 6; Comments of ICA at 4; Comments of UTC at 28-29.

¹³ Due to the importance of this issue, Motorola's satellite communications subsidiary -- Motorola Satellite Communications, Inc. -- is submitting separate reply comments in this proceeding which highlight and expand upon the arguments contained herein.

¹⁴ Motorola comments at 5.

¹⁵ Id. at 6.

¹⁶ Id. at 8.

bidding.¹⁷ Indeed, with respect to the pending Big LEO proposals, most of the applicants indicated their belief that a fair spectrum sharing plan could be crafted that allows all non-geostationary applicants to initiate service.¹⁸ This belief is entirely consistent with the flexible licensing history of the satellite service which has seen the FCC avoid mutually exclusive situations.¹⁹

Equally important to the mutual exclusivity issue, the satellite commenters express great concern over the precedent established in the international community if the FCC were to establish auctions for satellite services. Comsat, for example, argues that the cost of implementing satellite services could be driven beyond the point of economic feasibility if other countries followed the FCC's example.²⁰ In essential agreement, Loral notes an additional concern in having foreign countries establish licensing fees based on the "value" of the spectrum established in U.S. auctions.²¹

Thus, the record in this proceeding strongly supports the view that competitive bidding procedures are an inappropriate licensing mechanism for international satellite services. As more fully articulated in the reply comments

¹⁷ See, e.g., Comments of AMSC Subsidiary Corporation ("AMSC") at 3; Comments of Comsat Corporation ("Comsat") at 3; Comments of Hughes Communication Galaxy, Inc. and DIRECTv at ("Hughes") 3-6; Comments of Loral Qualcomm Satellite Services, Inc. ("Loral") at 10; Comments of Primosphere Limited Partnership at 1-2; Comments of TRW Inc. ("TRW") at 12-14; see also Comments of AT&T at 20-23; Comments of General Communication, Inc. at 14.

¹⁸ Comments of AMSC at 4, Comments of Loral at 2, Comments of TRW at 6.

¹⁹ See Comments of Hughes at 3.

²⁰ Comments of Comsat at 5.

²¹ Comments of Loral at 6.

filed by Motorola's satellite subsidiary, the public interest requires the FCC to apply flexible licensing policies that encourage the shared use of satellite spectrum in ways that avoid mutual exclusivity. The cost and uncertainty associated with other application/licensing schemes could doom global satellite services such as international MSS.

III. THE COMMENTS SUPPORT EFFORTS TO ENSURE THAT CAPITAL FORMATION IS NOT A MAJOR BARRIER FOR NEW PCS ENTRANTS, INCLUDING ALLOWING A LIMITED SECURITY INTEREST IN FCC LICENSES

In its opening comments, Motorola noted that competitive bidding for the new Personal Communications Service authorizations in the 2 GHz band was likely to require substantial front-loaded investment by licensees. Indeed, PCS licensees will be required to pay the actual value of the spectrum, undertake the costs of relocating existing licensees, and make significant infrastructure investments before any revenue stream materializes.²² Under the circumstances, Motorola expressed concern that capital markets may have difficulty absorbing the total costs of PCS deployment within the compressed time frame contemplated by competitive bidding, and therefore that capital formation could become a major barrier to entry for new providers.

The record in this proceeding evidences substantial agreement that obtaining capital for PCS spectrum acquisition and deployment poses significant problems,

²² Comments of Motorola at 9-11.

especially for designated entities.²³ Many parties accordingly discussed means of easing access to capital by licensees,²⁴ including investigating the possibility of allowing security interests in licenses,²⁵ a suggestion tendered by Motorola. Acting on Motorola's suggestion would provide lenders with better opportunities for recourse upon default, and therefore may increase lenders' willingness to fund the development of new PCS systems. As noted in Motorola's opening comments, however, in the event of a licensee's default, the lender should step into the shoes of the licensee and be required to meet any construction benchmarks, within the limits of equity, that would ordinarily apply.²⁶

IV. THE COMMENTS APPROPRIATELY SUGGEST DEFERRING CONSIDERATION OF COMPETITIVE BIDDING FOR AVM AND IVHS SPECTRUM UNTIL THE CONCLUSION OF RELATED RULEMAKINGS

A number of commenters have suggested that it may be premature to determine whether spectrum for Intelligent Vehicle Highway Systems ("IVHS"),

²³ Comments of Fibersouth, Inc. at 5; Comments of Paging Network, Inc. at 26; Comments of Personal Communications Network Services of New York at 3.

²⁴ Comments of Alliance for Fairness and Viable Opportunity at 11-13; Comments of American Wireless Communications Corp. at 31-32; Comments of AT&T at 24; Comments of BellSouth Corporation et al. at 26-27; Comments of Calcell Wireless, Inc. at 24; Comments of the California Public Utilities Commission at 4; Comments of Lightcom International, Inc. at 2; Comments of the National Association of Black-Owned Broadcasters, Inc. at 9-13; Comments of the National Minority Telecommunications Executives and Companies at 15-21; Comments of Rocky Mountain Telecommunications Association at 16-19; Comments of Taxpayer Assets Project at 2; Comments of Valley Management, Inc. at 3-4; Comments of Windsong at 5.

²⁵ Comments of NABER at 11-12; Comments of the Small Business PCS Association at 6-7; Comments of Telepoint Personal Communications, Inc. at 3.

²⁶ Comments of Motorola at 12-14.

including Automatic Vehicle Monitoring ("AVM") systems, should be auctioned.²⁷ IVHS encompasses a wide range of services beyond AVM systems, which itself is a broad category of offerings. Because IVHS and AVM systems are still in the process of being defined, Motorola agrees with those commenters suggesting that the interrelationship between competitive bidding authority and the specifics of IVHS and AVM systems need not be and should not be explored at this time. A supplemental Notice in the ongoing rulemaking proceeding specifically addressing the AVM allocation, for example, may be a more appropriate forum to consider the applicability of auctions to AVM services.

V. CONCLUSION

As detailed above, competitive bidding entails both significant promises and risks for radio spectrum licensing. In order to assure that competitive bidding does not have a deleterious impact on management of the radio spectrum in the public interest, Motorola and commenters have shown:

- Consistent with legislative intent, the Commission should continue to avoid mutual exclusivity in licensing of radio services wherever possible;
- The Commission should utilize construction benchmarks to ensure that licensed spectrum is used in the public interest and new services and technologies are rapidly deployed;
- The Commission must protect the interests of private radio users, through such measures as exempting General Category and intercategory shared channels, in recognition of the valuable

²⁷ Comments of Hughes Transportation Management Systems at 3; Comments of IVHS America at 6-7; Comments of SWBC at 14.

contribution made by private radio users and the inherent inequity of forcing such users to bid against commercial radio service providers;

- The Commission should not utilize competitive bidding to license satellite based "Big LEO" systems in view of potential for resolving mutual exclusivity in the band and the detrimental effect competitive bidding would have on the competitiveness of domestic companies in an international market;
- The Commission should consider the possibility of allowing lenders, subject to appropriate performance requirements in the event of default, to obtain a limited security interest in FCC licenses to facilitate applicants' access to capital; and
- The Commission should defer consideration of the use of competitive bidding for AVM and IVHS systems in recognition of the ongoing AVM rulemaking and the fact that many issues that will govern the interrelationship between these systems and the Commission's competitive bidding authority are unresolved.

By observing these simple caveats, competitive bidding can be implemented consistent with legislative intent to avoid bypassing the public interest mandate of the Commission in radio licensing matters.